

EXHIBIT 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FACEBOOK, INC.,)	
)	
)	
Plaintiff,)	
)	
vs.)	No. 5:08-cv-05780 JW
)	
POWER VENTURES, INC., a)	
Cayman Island)	
corporation; STEVE)	
VACHANI, an individual;)	
DOE 1, d/b/a POWER.COM,)	
DOES 2-25 inclusive,)	
)	
Defendants.)	
)	
_____)	

VIDEOTAPED 30(b)(6) DEPOSITION OF
STEVE VACHANI

Held at the Orrick, Herrington & Sutcliffe
1000 Marsh Road, Menlo Park, California
Wednesday, March 7, 2012, 9:57 a.m.

REPORTED BY: ELAINA BULDA-JONES, RPR, CSR #11720

1 time.

2 Q. All right.

3 MR. COOPER: This is a new one.

4 (Whereupon, Exhibit 236 was marked for
5 identification.)

6 (Whereupon, a brief discussion off the
7 record.)

8 BY MR. COOPER:

9 Q. Mr. Vachani, I put in front of you a
10 December 1st, 2008, e-mail chain between you and
11 Leigh Power?

12 A. That's correct.

13 Q. Do you -- well, first of all, do you see
14 that the -- in the middle of the page there is a
15 March 1st, 2008, postmaster one at Power e-mail.org
16 e-mail?

17 A. Yep.

18 Q. That -- would you agree that that is Leigh
19 Power's e-mail?

20 A. That is Leigh Power's.

21 Q. Okay. And do you see you -- that Leigh
22 Power, on December 1st, 2008, at 7:54 p.m., in the
23 middle of the page, wrote, "Steve, this looks
24 serious"?

25 A. Yes, I do.

1 Q. All right. Did you consider -- and this
2 e-mail that he was sending you contained the
3 December 1st, 2008, letter that I put in front of
4 you as Exhibit 108?

5 A. That's correct, yes.

6 Q. All right. Did you agree with him that it
7 was -- that this -- that did you believe this was
8 serious?

9 A. I don't believe this is -- I think
10 "serious" is a -- is a -- is an objective term.

11 Q. I understand that.

12 A. I think -- I don't think that's the
13 appropriate term. I think it required a response.
14 And we did have communication with Facebook, proper
15 and transparent communication, which we did respond.

16 So I believe it required -- what I believe
17 is it required a communication with Facebook or
18 their lawyers, which we -- which we did have
19 obviously.

20 Q. Do you see you responded to Mr. Power
21 personally?

22 A. Yes, I do.

23 Q. All right. And do you see your -- you
24 said in the first sentence, "Thanks. This is a
25 standard cease-and-desist letter"?

1 Q. All right.

2 A. She reported to Eric.

3 Q. All right. And Eric reported to you?

4 A. That's correct.

5 (Whereupon, Exhibit 238 was marked for
6 identification.)

7 (Whereupon, a brief discussion off the
8 record.)

9 BY MR. COOPER:

10 Q. Mr. Vachani, I have put in front of you an
11 e-mail chain, which we have seen part of it in the
12 past, which begins on the cease-and-desist letter
13 dated -- the e-mail's on January 1st, the same
14 e-mail from Leigh Power that says, "This looks
15 serious," if you go to page 2.

16 Do you see it?

17 A. Correct, yes.

18 Q. All right. And in the past, both at your
19 individual and at your last deposition, both
20 Mr. Chatterjee and I put in front of you your
21 response to this December 2nd, 2008, e-mail --

22 A. Correct.

23 Q. -- to Felipe Herrera and Eric Santos,
24 correct?

25 A. That's correct.

1 was -- it was one -- it was one -- I don't know.

2 The word "outdated" means an old IP address. They
3 were probably blocking one of our -- one of our IP
4 addresses.

5 Q. Was that -- and the address they were
6 blocking was a current IP address used by Power to
7 connect to Facebook?

8 A. That was a current address.

9 Q. All right.

10 (Whereupon, Exhibit 245 was marked for
11 identification.)

12 (Whereupon, a brief discussion off the
13 record.)

14 BY MR. COOPER:

15 Q. Mr. Vachani, I put in front of you an
16 exhibit, 245, which is one of the e-mails that was
17 produced on January 25th for the first time. And
18 it's an e-mail chain, which, if you go to the second
19 page, begins on December 23rd. Do you see that?

20 A. Okay. Yes.

21 Q. It begins with an e-mail that's subject
22 matter is "Bloqueo di Facebook." Do you see that?

23 A. Yes.

24 Q. All right. And it's from Julian Conceicao
25 to you, Eric Santos, Cornelius Conboy, Patrick

1 Amorim, cc'ing Andre Fernandes and Elmo Cruz?

2 A. Correct.

3 Q. All right. First is a practical question.

4 Do you know or have any understanding why this
5 e-mail was not produced prior to January 25th in any
6 of your other e-mail productions from your Yahoo
7 account or anything?

8 A. I do not know.

9 Q. All right. Do you see we have produced,
10 because of the high importance of this particular
11 file, a certified translation already, as of today,
12 on an expedited basis?

13 A. Correct. Yes.

14 Q. All right. Please go to the second page
15 of the certified translation.

16 Do you see that the translator has
17 interpreted that first e-mail to read, in the body
18 of the e-mail, "Dear all, Power site Facebook is
19 disabled at the moment because Facebook has blocked
20 our access through web servers."

21 A. Correct.

22 Q. And then it says, "Andre is running a
23 configuration to use new IPs (Workaround Solution
24 1)." "

25 A. Yes.

1 Q. All right. Do you understand whether or
2 not this was the first or most -- or second or
3 any -- do you have any understanding whether
4 Facebook had blocked Power before December 23rd?

5 A. I believe there would have been one --
6 there would have been one instance before and then
7 after the 26th, I guess, a second instance.

8 Q. This was three days before you made the
9 executive decision to continue to connect to
10 Facebook, correct?

11 A. To leave our connection, correct.

12 Q. All right. Now, do you see Andre
13 Fernandes, three hours or close to four hours after
14 Julian Conceicao sent her e-mail, said -- wrote,
15 "Facebook is working in Power.com again"?

16 A. Yes.

17 Q. And then he said, "We are using a proxy
18 solution that allows access to Facebook through
19 different IPs from our web servers"?

20 A. Correct.

21 Q. Was the proxy solution the workaround that
22 is referred to in Julian Conceicao's e-mail that you
23 were copied on?

24 A. I am assuming that they -- they were
25 activating our solution to -- that was -- where the

1 IP was updated from our -- from our many IPs that we
2 have -- that we already had.

3 Q. Okay. On December 28th, the next e-mail
4 in the chain, Andre Fernandes informs all of you all
5 over again, "We have been blocked by Facebook yet
6 again," correct?

7 A. That's correct.

8 Q. All right. And he then says, "I have
9 configured a server at Amazon to serve as proxy, and
10 Facebook is logging in normally at the moment"?

11 A. Yes.

12 Q. So Mr. Fernandes actually had to make a
13 change to your system of IP blocks -- or of rotating
14 IPs by switching it to Amazon, correct?

15 A. Well, there was already some -- there was
16 already a system with Amazon, but he must -- he made
17 some updates.

18 Q. He says, "I have configured a server at
19 Amazon," correct?

20 A. I guess he configured. I don't know what
21 he -- we had -- we already had a relationship with
22 Amazon but I don't know what he specifically did.

23 Q. He had to --

24 A. He made some kind of adjustment.

25 Q. All right. Then do you see Mr. Santos, in

1 response to that comment, informs everybody,
2 yourself included, "We need to develop a solution to
3 create proxy servers every six hours automatically
4 or something similar"?

5 A. That's correct.

6 Q. All right. "I'm sure they will continue
7 blocking our services," is what he then adds,
8 correct?

9 A. Yes.

10 Q. All right. So Mr. Santos recognized that
11 you needed to develop a new system to deal with the
12 fact that you wanted to continue accessing Facebook
13 despite their continued blocking of your site,
14 correct?

15 A. I think what he is saying is it needs to
16 be more frequent or updated -- to be adjusted -- the
17 frequency needs to be adjusted.

18 Q. Okay. And that's because that
19 functionality didn't exist already?

20 A. No, he's saying that the frequency -- he
21 says that the frequency needs to be adjusted.

22 Q. He uses the word "solution," correct?

23 A. Yeah, solution. I mean, he is
24 basically -- the solution to change our IPs, update
25 and rotate already existed. He basically is

1 referring to how often it gets updated, and it's
2 pool IP addresses.

3 Q. Mr. Vachani, I'm going to again ask
4 something.

5 A. Sure.

6 Q. There have now been four e-mails I have
7 showed you that you have been cc'd on.

8 A. Yeah.

9 Q. Do you have an understanding why not one
10 of them was produced to us prior to January 25 in
11 any of your productions over the past three years?

12 A. I do not.

13 Q. All right. Do you recall telling me at
14 the July 11th -- July 2011 depo that you searched
15 actively your e-mail accounts to find any that
16 referred to the events of December 2008?

17 A. Yes.

18 Q. Would you agree that these are referring
19 specifically to some of the biggest events in this
20 litigation, namely, the events involving Facebook's
21 attempt to block Power?

22 A. Yes.

23 Q. Would you agree these are amongst the type
24 of e-mails you assured me you would try to search
25 for?

1 A. Yes.

2 Q. All right. And do you have any
3 understanding why they were not located, a single
4 one of them, in any of your prior searches?

5 A. I don't know why they were not located.

6 Q. All right. Does that reflect that you
7 yourself may have from time to time deleted e-mails
8 after January -- or after January 1st, 2009, even if
9 they related to the issues in this case?

10 A. I don't -- I don't believe so. I don't --
11 I don't know where these -- I don't know why these
12 were not produced.

13 Q. All right. I will represent to you these
14 were only produced because we found them in Mr. --
15 in the backup server from the Micro Exchange server.

16 A. Uh-huh.

17 Q. But my question is if you have any idea
18 why you, as you testified, kept all your e-mails,
19 why they weren't actually produced through your
20 forward production, if you know?

21 A. I don't know the answer to that.

22 Q. Okay. Do you see on December 29th, 2008,
23 Andre Fernandes sent an e-mail to Elmo Cruz, Julian
24 Conceicao, and Lucas Araujo?

25 A. Yes.

1 Q. All right. And he asks Elmo, "Could you
2 please ask someone in your team to run a diagnostic
3 exclusively with Facebook?"

4 A. Yes.

5 Q. All right. "This way we could receive a
6 notification via e-mail when log in is not possible
7 and we would know when Facebook was blocked again"?

8 A. Correct.

9 Q. All right. "Tyaga could do this, but
10 since he's not here we need to find someone else,"
11 correct?

12 A. Correct.

13 Q. And then he says, "I'm checking a way to
14 always change the proxy server in a more optimized
15 manner"?

16 A. Correct.

17 Q. All right. So again, this was a further
18 adjustment to your dynamic rotation system, in
19 addition to sending it to Amazon, that was necessary
20 to continue your access of the -- of the Facebook
21 blocks and to continue service, correct?

22 A. Yes.

23 Q. Did you have the ultimate authority to
24 instruct all of these individuals to make these
25 adjustments?

1 A. I had the authority, but -- I think that
2 they were -- they were taking natural steps to -- to
3 make adjustments.

4 Q. All right. But were you copied on --

5 A. Correct.

6 Q. -- every one of these e-mails?

7 A. Yes.

8 Q. And you approved of these steps, correct?

9 A. Yes.

10 Q. And you had the right to control these
11 steps, correct?

12 A. Yes.

13 Q. All right. Monday, December 29th, 2008,
14 is the day before Facebook sued you in this case, is
15 it not?

16 A. Yes.

17 Q. All right. And it's two days after you
18 made the executive decision -- that you wrote to the
19 team that you had made a decision to continue
20 accessing Facebook?

21 A. That's correct, yes.

22 Q. In light of Exhibit 245, do you believe
23 your statement in Paragraph 11 of Exhibit 244 is
24 accurate to the extent you said, "Power did not
25 undertake any effort to circumvent that block"?

1 A. I think that statement should be updated
2 to more accurately reflect it, based on this
3 information.

4 MR. COOPER: I am optimistic I'm going to
5 finish earlier than I thought.

6 But I would like to take a break right now
7 so I can try and siphon out some of the exhibits
8 that I was -- that I brought and not have to siphon
9 through them. So you want to take 15 minutes?

10 THE WITNESS: Sure.

11 THE VIDEOGRAPHER: We are going off the
12 record. The time is 1:36 p.m.

13 (Whereupon, a brief recess was taken.)

14 THE VIDEOGRAPHER: This begins Videotape
15 No. 3 in the continuing deposition of Power
16 Ventures, Inc. The time is 1:51 p.m. on March 7th,
17 2012, and we're back on the record.

18 BY MR. COOPER:

19 Q. Mr. Vachani, before the break, I showed
20 you Exhibit 244, Paragraph 11, the sentence, "Power
21 did not undertake any effort to circumvent that
22 block and did not provide users with any tools
23 designed to circumvent it"?

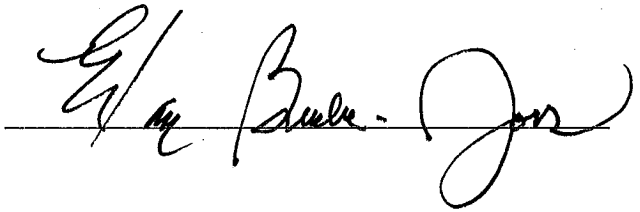
24 A. Yes.

25 Q. And you said you did agree it should be

1 of the testimony given by the witness. (Fed. R. Civ. P.
2 30(f)(1)).

3 Before completion of the deposition, review of
4 the transcript [XX] was [] was not requested. If
5 requested, any changes made by the deponent (and
6 provided to the reporter) during the period allowed, are
7 appended hereto. (Fed. R. Civ. P. 30(e)).

8
9 Dated: MARCH 8, 2012

10 
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25